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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

S. WESTRON, and
J. MILNE,

Plaintiffs,

v.

ZOOM VIDEO
COMMUNICATIONS, INC., a
Delaware corporation,
Defendants.

Case Number:

**COMPLAINT ON BEHALF OF THE
NON-AMERICAN PEOPLES OF THE
FIVE EYES COUNTRIES:
DEMAND FOR JURY TRIAL**

CLASS ACTION

JURISDICTION

1. This Court has subject-matter jurisdiction over the claims for relief asserted herein pursuant to Title 28, U.S.C., Section 1332(d)(2)(B).

VENUE

2. Venue of this civil action is properly fixed in the Northern District of California, pursuant to Title 28, U.S.C., Section 1331(b)(2); at least a substantial part, and likely all, of the wrongful conduct which is the subject of this civil action were planned, directed, and perpetrated within the Northern District of California.

DIVISIONAL ASSIGNMENT

3. Plaintiffs are informed and believe, and on such basis aver, that all, or at least a substantial part, of the events and/or omissions giving rise to the claims asserted herein occurred within the County of Santa Clara, California. (*Cf.*: Civil L.R. 3-2(c).)

PARTIES

4. Plaintiff, S. Westron (**hereinafter “Westron”**), is an individual citizen of the United Kingdom of Great Britain and Northern Ireland (**hereinafter the “UK”**).

5. Plaintiff, J. Milne (**hereinafter “Milne”**), is an individual citizen of New Zealand who, during at least some of the times relevant hereto, has been domiciled in Australia.

6. Plaintiffs are informed and believe, and thereupon aver, that Defendant, Zoom Video Communications, Inc. (**hereinafter “Zoom”**), is a corporation organized and existing pursuant to the laws of the State of Delaware, whose principal place of business is within the Northern District of California.

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**COMPLAINT ON BEHALF OF THE NON-AMERICAN PEOPLES OF THE
FIVE EYES COUNTRIES; DEMAND FOR JURY TRIAL – PAGE 2**

CLASS ALLEGATIONS

7. On or about 21 April 2022, this Court granted final approval of a class-action settlement in the civil action (**hereinafter the “Prior Litigation”**) styled, “In re: Zoom Video Communications, Inc. Privacy Litigation”, Case No. 3:20-cv-02155-LHK in the above-captioned court. (*See*, Prior Litigation Document 249.)

8. Judgment was entered the same day. (See, Prior Litigation Document 250.)

9. The Settlement Class in the Prior Litigation was limited by its express terms to, "... Persons in the United States ..." (See, Prior Litigation Document 191-1, Page 9, at § 1.40.)

10. The limitation of the Settlement Class in the Prior Litigation to, "... Persons in the United States ...", did not result from inadvertence.

11. The limitation of the Settlement Class in the Prior Litigation to, “... Persons in the United States ...”, excluded the people of Australia, Canada, New Zealand, and the United Kingdom.

12. The people of Australia, Canada, New Zealand, and the United Kingdom, share our values, our common language (*see*, Cal. Const., art. III, § 6), and even the common law (*see*, Civ. Code, § 22.2).

13. Australia, Canada, New Zealand, and the United Kingdom, are so closely aligned with the United States that they are the five parties to the Five Eyes agreement, a long-standing secret intelligence agreement that allocates electronic surveillance collection among the five states and anticipates a high level of coordination and intelligence sharing. *See, ex rel., Intelligent Waves, LLC v. United States*, 135 Fed.Cl. 299, 302 n.1 (2017).

14. The members of the proposed Plaintiff Class described, *infra*, are so numerous that joinder of all members is impractical. Zoom's SEC Form 10-K, filed 18 March 2021, states that Zoom's, "... platform addresses the communications needs

1 of users worldwide, and [Zoom] see[s] international expansion as a major
2 opportunity.” The same document recites that thirty-one percent (31%) of Zoom’s
3 total revenue in the year commencing 1 February 2020, and concluding 31 January
4 2021, was derived from marketing areas to which Zoom refers as Asia-Pacific
5 (“APAC”), and Europe, Middle East, and Africa (“EMEA”). On the basis of the
6 foregoing, Plaintiffs are informed and believe, and upon such information and belief
7 aver, that there are hundreds of thousands of members of the proposed Plaintiff Class
8 described, *infra*.

9 15. There are numerous questions of both law and fact common to the
10 members of the proposed Plaintiff Class described, *infra*. Common issues will be
11 enumerated within Plaintiffs’ forthcoming motion for class certification.

12 16. Plaintiffs’ claims asserted herein are typical of the claims of the members
13 of the proposed Plaintiff Class described, *infra*. Each class member’s claim arises
14 from the same course of events; Plaintiffs’ claims are, at a minimum, reasonably
15 co-extensive with those of the absent class members.

16 17. Plaintiffs will fairly and adequately protect the interests of the proposed
17 Plaintiff Class described, *infra*; neither any Plaintiff, nor their undersigned counsel,
18 has any conflict of interest with other class members; and (2) Plaintiffs and their
19 undersigned counsel will prosecute this action vigorously on behalf of the proposed
20 Plaintiff Class described, *infra*.

21 18. With regard to each claim for injunctive relief asserted herein, Zoom has
22 acted or refused to act on grounds that apply generally to each Class and Subclass
23 described, *infra*, so that final injunctive relief or corresponding declaratory relief is
24 appropriate respecting the proposed Plaintiff Class described, *infra*, as a whole.

25 19. With regard to each claim for monetary relief asserted herein, questions
26 of law and/or fact common to the class members will predominate over any questions
27 affecting only individual members; class-action treatment will be superior to other
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available methods for fairly and efficiently adjudicating the controversy.

PROPOSED CLASS DEFINITION

20. The Plaintiff Class which Plaintiffs propose to represent is proposed to be defined as follows:

All Persons in Australia, Canada, New Zealand, and/or the United Kingdom of Great Britain and Northern Ireland, who, at any time subsequent to 31 May 2018, registered, used, opened, or downloaded the Zoom Meetings Application (“App”), except for (i) all Persons who have only registered, used, opened, or downloaded the Zoom Meetings App through an Enterprise-Level Account or a Zoom for Government Account, (ii) Zoom and its officers and directors; (iii) any judicial officer of the United States who exercises any authority over the above-captioned civil action; and (iv) any employee of any court which exercises any authority over the above-captioned civil action.

... including any and all sub-classes the Court may deem appropriate, and/or such other class defined in such manner as the Court may deem conducive to the use of the class-action procedural device to adjudicate the claims asserted herein.

FACTS

21. Over the past few decades a new industry has arisen which generates hundreds of billions of dollars of annual revenue by targeting consumers with espionage through their phones and computers. The perpetrators of this massive espionage campaign would state that their objective is to gather sufficient information (**hereinafter “Personal Data”**) about an individual to provide them with “relevant” and “personalized” advertisements. This is not, however, limited to innocent matter such as advertising diapers to a person who has just welcomed a new baby into their

1 home. The Personal Data gathered about an individual can be used to target that
2 person with a political advertisement that stresses the candidate's agreement with the
3 targeted person in respect to a particular contentious issue, while omitting any
4 reference to the candidate's views on a different contentious issue as to which the
5 target vehemently disagrees. It is axiomatic that the advertising company must know
6 the target's views on various issues in order to so manipulate the target. Similarly,
7 knowledge about a person's religious beliefs, marital status, sexual orientation,
8 occupation, work habits, sleep habits, and relationships with family members, can all
9 be used to manipulate the targeted consumers to alter their personal spending
10 behaviors.

11 22. In order to aggregate Personal Data about a particular target, it is valuable
12 for the perpetrators to track each target as they use various Internet-connected devices
13 (e.g., their phone and their laptop), so the perpetrators can develop a dossier
14 (**hereinafter a “Dossier”**) containing the collected data pertaining to a particular
15 targeted consumer.

16 23. Alphabet, Inc. (**hereinafter “Google”**), reported over \$182 billion in
17 revenue in 2020. Google's SEC Form 10-K, filed 3 February 2021, recites:

18 **“How we make money** [¶] Our advertising products deliver relevant ads
19 at just the right time, to give people useful commercial information,
20 regardless of the device they're using. We also provide advertisers with
21 tools that help them better attribute and measure their advertising
22 campaigns. ... [¶] We aim to ensure great user experiences by serving the
23 right ads at the right time and by building deep partnerships with brands
24 and agencies. We also seek to improve the measurability of advertising
25 so advertisers know when their campaigns are effective.”

26 24. According to a news media report dated 26 April 2022, Google, and
27 similar companies, which have custody of sensitive personal information have from
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1 time to time been tricked into releasing that information to criminal organizations of
2 various kinds:

3 <https://finance.yahoo.com/news/tech-giants-duped-giving-data-173424811.html>

4 25. Meta Platforms, Inc. (**hereinafter “Facebook”**), reported approximately
5 \$86 billion in revenue in 2020. Facebook’s SEC Form 10-K, filed 28 January 2021,
6 recites:

7 “We generate substantially all of our revenue from selling advertising
8 placements to marketers. Our ads enable marketers to reach people based
9 on a variety of factors including age, gender, location, interests, and
10 behaviors.”

11 26. According to a news media report dated 26 April 2022, Facebook
12 engineers have stated in internal communications that Facebook, “... do[es] not have
13 an adequate level of control and explainability over how ... [its] systems use data ...”:

14 <https://www.vice.com/en/article/akvmke/facebook-doesnt-know-what-it-does-with-your-data-or-where-it-goes>

16 27. Zoom offers videoconferencing services. Users of these services include
17 both accountholders and non-accountholders.

18 28. Zoom’s SEC Form 10-K, filed 18 March 2021, states:

19 “[Zoom] provide[s] a video-first unified communications platform that
20 delivers happiness and fundamentally changes how people interact. ...
21 The cornerstone of [Zoom’s] platform is Zoom Meetings, around which
22 [Zoom] provide[s] a full suite of products and features designed to give
23 users an easy, reliable, and innovative unified communications
24 experience. Users are comprised of both hosts who organize video
25 meetings and the individual attendees who participate in those video
26 meetings.”

27 29. Zoom, or its authorized agents, have created an application designed for

1 Apple's iPhones, and an application designed for Android phones, **(hereinafter**
2 **collectively the "Zoom App").**

3 30. Westron and Milne both installed the Zoom App onto their phones, and
4 have used it.

5 31. A published media report dated 26 March 2020 states, *inter alia*:
6 "The Zoom app notifies Facebook when the user opens the app, details
7 on the user's device such as the model, the time zone and city they are
8 connecting from, which phone carrier they are using, and a unique
9 advertiser identifier created by the user's device which companies can
10 use to target a user with advertisements."¹

11 32. On 27 March 2020, Zoom admitted to the truth of the above-quoted
12 media report dated 26 March 2020; Zoom's inculpatory statement will be admissible
13 at trial. (*See*, Rule 801(2)(2), Fed.R.Evid.)

14 33. Zoom may claim that it ceased and desisted from providing such data to
15 Facebook. However, Plaintiffs' undersigned counsel has reviewed much of this
16 Court's publicly-available files in the Prior Litigation, but has been unable to locate
17 any evidence that would support such a claim. In reliance upon established axioms
18 of the law of evidence, Plaintiffs are therefore informed and believe, and thereupon
19 aver, that the practice disclosed in the above-quoted media report dated 26 March
20 2020 has continued, and continues to the present day.

21 34. Plaintiffs are informed and believe, and upon such information and belief
22 aver, that, without the knowledge or permission of Westron, Milne, or Class Members,
23 Zoom caused the Zoom App to transmit sensitive personal data to a third party (*i.e.*,

25 1 Plaintiffs herein refer to the, "... unique advertiser identifier ...", as a
26 Dossier. The referenced article is found at:
27 <https://www.vice.com/en/article/k7e599/zoom-ios-app-sends-data-to-facebook-even-if-you-dont-have-a-facebook-account>

1 Facebook); this sensitive personal data includes, but may not be limited to, the fact
2 that the user is using the Zoom App (which in turn discloses when the user is engaged
3 in a videoconference), detailed information about the user's iPhone, including
4 Application Bundle Identifier, Application Instance ID, Application Version, Device
5 Carrier, iOS Advertiser ID, iOS Device CPU Cores, iOS Device Disk Space Available,
6 iOS Device Disk Space Remaining, iOS Device Display Dimensions, iOS Device
7 Model, iOS Language, iOS Timezone, and iOS Version.

8 35. A user of the Zoom App would not perceive that the Zoom App was
9 collecting, let alone disseminating, the above-referenced sensitive personal data.

10 36. Plaintiffs are informed and believe, and upon such information and belief
11 aver, that, without the knowledge or consent of the subjects of this information,
12 Facebook uses this information in conjunction with other information it has obtained
13 to create and/or enhance Dossiers it maintains as to Weston, Milne, and Class
14 Members.

15 37. A published media report last updated 26 May 2021 states, *inter alia*, that
16 Zoom, "... allow[s] third-party access to private personal data":

17 “This may come in the form of outright data sharing or by using local
18 third-party analytics software (such as Google Analytics, which collects
19 a plethora of user information)”²

20 38. The above-quoted published media report last updated 26 May 2021 links
21 to a Wikipedia article which, as of 26 May 2021, stated:

“Google Analytics is used to ***track website activity*** such as session duration, pages per session, bounce rate etc. of individuals using the site, along with the information on the source of the traffic. It can be integrated with Google Ads,[¹] with which users can create and review

² <https://privacyspy.org/product/zoom/>

1 online campaigns by tracking landing page quality and conversions
 2 (goals). Goals might include sales, lead generation, *viewing a specific*
 3 *page, or downloading a particular file.* Google Analytics' approach is
 4 to show high-level, dashboard-type data for the casual user, and more
 5 in-depth data further into the report set. Google Analytics analysis can
 6 identify poorly performing pages with techniques such as funnel
 7 visualization, where visitors came from (referrers), how long they stayed
 8 on the website and their geographical position. It also provides more
 9 advanced features, including custom visitor segmentation.] Google
 10 Analytics e-commerce reporting can track sales activity and performance.
 11 The e-commerce reports shows a site's transactions, revenue, and many
 12 other commerce-related metrics.

13 * * *

14 "... Whenever someone visits a website that uses Google Analytics,
 15 Google tracks that visit via the users' IP address in order to *determine*
 16 *the user's approximate geographic location.* ... Google has also released
 17 a browser plug-in that turns off data about a page visit being sent to
 18 Google, however, this browser extension is not available for mobile
 19 browsers.[]"³ (Emphasis added.)

20 39. In the tradecraft of the consumer espionage industry, IP addresses are
 21 used not only to determine a subject's physical location, but also to correlate the user's
 22 device to other devices which use the same IP address. This, in turn, allows tracking
 23 of the user's activities among several devices, and also facilitates linking the user to
 24 cohabitants, coworkers, and companions.

25 40. The Prior Litigation was prosecuted by able and respected class counsel,

26
 27 ³ <http://web.archive.org/web/20210512194744/https://en.wikipedia.org>
 28 /wiki/Google_Analytics

1 who had conducted, “comprehensive discovery”.⁴ The information provided on
 2 discovery in the Prior Litigation was so highly sensitive that it actually resulted in a
 3 dispute over the circumstances under which counsel could provide, “Highly
 4 Confidential – Attorneys’ Eyes Only”, documents to even their *consulting* experts.⁵
 5 With the benefit of that comprehensive discovery, the able and respected class counsel
 6 in the Prior Litigation reported to this Court that Zoom does not merely provide IP
 7 addresses to Google, but that Zoom also provides users’ precise Global Positioning
 8 System data to Google.⁶ On the basis of the foregoing, Plaintiffs are informed and
 9 believe, and upon such information and belief aver, that, Zoom provides to Google the
 10 precise physical locations of Plaintiffs and Class Members.

11 41. Plaintiffs are informed and believe, and upon such information and belief
 12 aver, that the above-enumerated sensitive personal data were used by one or more
 13 commercial espionage companies (including, at a minimum, Google) to monitor the
 14 physical location of Plaintiffs and Class Members.

15 42. Plaintiffs are informed and believe, and upon such information and belief
 16 aver, that, without the knowledge or permission of Plaintiffs and Class Members,
 17 Zoom caused the Zoom App to transmit sensitive personal data to a third party (*i.e.*,
 18 Google); this sensitive personal data includes, but may not be limited to, the precise
 19 physical locations of Plaintiffs and Class Members, and when and for how long they
 20 used Zoom.

21 43. A user of the Zoom App would not perceive that the Zoom App was

23 ⁴ See, *ex rel.*, Clerk’s file in Prior Litigation, at Document 191, ¶ 6, on
 24 ECF Pages 2-3.

25 ⁵ See, *ex rel.*, Clerk’s file in Prior Litigation, at Document 138-1, ¶¶
 26 2.7, 7.4(a), on ECF Pages 2, 11; *see also*, Documents 138, 148.

27 ⁶ See, *ex rel.*, Clerk’s file in Prior Litigation, at Document 179, ¶ 111,
 28 on ECF Page 31.

1 ||collecting, let alone disseminating, the above-referenced sensitive personal data.

2 44. Plaintiffs are informed and believe, and upon such information and belief
3 aver, that, without the knowledge or consent of the subjects of this information,
4 Google uses this information in conjunction with other information it has obtained to
5 create and/or enhance Dossiers it maintains as to Plaintiffs and Class Members.

PROPOSED CLASS REPRESENTATIVES

45. Westron has never been a citizen or resident of the United States.

46. Westron began to use Zoom in early 2020.

9 47. Westron was not present in the United States at any time after he first
10 began to use Zoom, until he visited the United States in late May, 2022 (*i.e.*, after
11 entry of final Judgment in the Prior Litigation).

12 48. Westron does not believe he was provided with the Court Approved
13 Notice of Class Action Settlement which was issued in the Prior Litigation on or about
14 6 December 2021; Westron assumes this is because he was not within the Class
15 Definition in the Prior Litigation, and was therefore not a member of that Settlement
16 Class.

17 49. Westron has never used the Zoom videoconferencing service from any
18 location within the United States.

19 50. Westron has used the Zoom videoconferencing service from various
20 locations within the UK, as well as from France, Spain, and the United Arab Emirates.

51. On or about 19 April 2020, shortly after he began using Zoom, Weston purchased a Zoom Standard Pro Monthly subscription, at a monthly cost of GBP 14.39 per month (*i.e.*, GBP 11.99 + GBP 2.40 VAT [*i.e.*, Value Added Tax]).

24 52. Zoom's invoice for Weston's Zoom Standard Pro Monthly subscription
25 was issued from 55 Almaden Boulevard, 6th Floor, in San Jose, California, to
26 Weston's home address at the time in the UK.

53. Prior to purchasing his Zoom Standard Pro Monthly subscription,

1 Westron became aware of, and believed, public claims by Zoom that the Zoom
2 videoconferencing was secure (i.e., that persons not invited to be parties to Zoom
3 videoconferences could not hear or see Zoom videoconferences or join into private
4 Zoom videoconferences).

5 54. At the time Westron was considering purchasing his Zoom Standard Pro
6 Monthly subscription, Zoom's website falsely stated that Zoom calls were secured
7 with end-to-end encryption.

8 55. Prior to purchasing his Zoom Standard Pro Monthly subscription,
9 Westron was aware of public claims by Zoom that (a) Zoom does not sell users' data;
10 (b) Zoom takes privacy seriously and adequately protects users' personal information;
11 and (c) Zoom's video conferences are secured with end-to-end encryption and are
12 protected by passwords and other security measures.

13 56. Zoom's representations that Zoom's video conferences are secured with
14 end-to-end encryption were false at the time they were made; Zoom may later have
15 launched end-to-end encryption, but not until millions of Zoom users had used Zoom
16 for many months having been told that their Zoom calls were end-to-end encrypted
17 when they were not.

18 57. Westron reasonably believed Zoom's claims, and Zoom's claimed
19 security attributes of the Zoom videoconferencing service were important to Westron.

20 58. Westron reasonably believed that the public claims by Zoom that the
21 Zoom videoconferencing service was secure (i.e., that persons not invited to be parties
22 to Zoom videoconferences could not hear or see Zoom videoconferences or join into
23 private Zoom videoconferences) were true.

24 59. Westron reasonably relied upon the public claims by Zoom that the Zoom
25 videoconferencing service was secure (i.e., that persons not invited to be parties to
26 Zoom videoconferences could not hear or see Zoom videoconferences or join into
27 private Zoom videoconferences).

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1 60. Westron used the Zoom Waiting Room, Mute on Entry, and No ability
2 for [non-host] users to share their screens features.

3 61. Westron used Zoom to confer privately with an attorney in the UK who
4 was then representing him on an unrelated matter; Westron verified on the Zoom App
5 (by clicking on the green shield), which resulted in an assurance that encryption was
6 enabled.

7 62. Westron was not aware, and did not understand, that Zoom would collect
8 and share his personal information with third parties who would use that personal
9 information to assemble data about Mr. Westron for purposes of targeted advertising
10 and to attempt to influence Mr. Westron's behaviors.

11 63. Westron did not give Zoom permission to access, take or use his
12 personally identifiable information.

13 64. Westron relied upon Zoom's promises that (a) Zoom does not sell users'
14 data; (b) Zoom takes privacy seriously and adequately protects users' personal
15 information; and (c) Zoom's video conferences are secured with end-to-end encryption
16 and are protected by passwords and other security measures.

17 65. If Westron had known that the video conferencing service was not secure,
18 or if Westron had known that Zoom had failed to secure Westron's personally
19 identifiable information, he would not have purchased a Zoom Pro account (or he
20 would have paid less for it).

21 66. Westron has accessed the Zoom videoconferencing service from, at a
22 minimum, the following phones and computers:

- 23 a. From the time he initially used Zoom until September, 2020, Westron
24 accessed Zoom from his iPhone 6;
- 25 b. From the time he initially used Zoom until July, 2021, Westron also
26 accessed Zoom from his iPhone X;
- 27 c. From and after August, 2020, Westron also accessed Zoom from a phone

called, “Oppo A9”, which uses an Android operating system;

- d. From and after July, 2021, Westron has also accessed Zoom from his iPhone 12;
 - e. From the time he initially used Zoom until September, 2020, Westron also accessed Zoom from his Dell Latitude 7400, which uses the Windows operating system;
 - f. From the time he initially used Zoom until September, 2020, Westron also accessed Zoom from his Microsoft Surface Pro 6, which uses the Windows operating system;
 - g. From and after September, 2020, Westron has accessed Zoom from two different Microsoft Surface Pro 7 devices, which use the Windows operating system;
 - h. From and after April, 2021, Westron has also accessed Zoom from his Dell Latitude 7410, which uses the Windows operating system.

67. Through the end of 2021, Westron accepted updated software from Zoom at or near the time it was issued, and also accepted updated Apple, Android, and Windows operating system software on his various devices as those were issued; for example, Westron's records indicate that Zoom's "June 5, 2020 version 5.0.5 (26225.0603)" was downloaded into his iPhone X on 13 June 2020.

68. As of January, 2022, the version of Zoom software on Westron's iPhone 12 is Version 5.9.1.

69. As of January, 2022, the version of Zoom software on Westron's Oppo A9 is Version 5.9.1.3642.

70. As of January, 2022, the version of Zoom software on Weston's Surface Pro 7 is Version 5.9.1.

71. As of January, 2022, the version of Zoom software on Westron's Dell Latitude 7410 is Version 5.6.1.

1 72. Milne has never been a citizen or resident of the United States.

2 73. Milne began to use Zoom in 2018.

3 74. Milne has not been present in the United States at any time after April of
4 2019.

5 75. Milne does not believe he was provided with the Court Approved Notice
6 of Class Action Settlement which was issued in the Prior Litigation on or about 6
7 December 2021; Milne assumes this is because he was not within the Class Definition
8 in the Prior Litigation, and was therefore not a member of that Settlement Class.

9 76. Milne has no recollection of ever having used the Zoom
10 videoconferencing service from any location within the United States.

11 77. Milne has used the Zoom videoconferencing service from various
12 locations within Australia and New Zealand.

13 78. On or about 9 April 2020, Milne purchased a Zoom Standard Pro
14 Monthly subscription, at a cost of AUD 23.09 per month (*i.e.*, AUD 20.99 + AUD 2.10
15 GST [*i.e.*, Goods and Service Tax]).

16 79. Zoom's invoice for Milne's Zoom Standard Pro Monthly subscription
17 was issued from 55 Almaden Boulevard, 6th Floor, in San Jose, California, to Milne's
18 home address at the time in Australia.

19 80. Prior to purchasing his Zoom Standard Pro Monthly subscription, Milne
20 became aware of, and believed, public claims by Zoom that the Zoom
21 videoconferencing was secure (*i.e.*, that persons not invited to be parties to Zoom
22 videoconferences could not hear or see Zoom videoconferences or join into private
23 Zoom videoconferences).

24 81. At the time Milne was considering purchasing his Zoom Standard Pro
25 Monthly subscription, Zoom's website falsely stated that Zoom calls were secured
26 with end-to-end encryption.

27 82. Prior to purchasing his Zoom Standard Pro Monthly subscription, Milne

1 was aware of Zoom's public claims that (a) Zoom does not sell users' data; (b) Zoom
 2 takes privacy seriously and adequately protects users' personal information; and (c)
 3 Zoom's video conferences are secured with end-to-end encryption and are protected
 4 by passwords and other security measures.

5 83. Zoom's representations that Zoom's video conferences are secured with
 6 end-to-end encryption were false at the time they were made; Zoom may later have
 7 launched end-to-end encryption, but not until millions of Zoom users had used Zoom
 8 for many months having been told that their Zoom calls were end-to-end encrypted
 9 when they were not.

10 84. Milne reasonably believed Zoom's claims, and Zoom's claimed security
 11 attributes of the Zoom videoconferencing service were important to Milne.

12 85. Milne reasonably believed that the public claims by Zoom that the Zoom
 13 videoconferencing service was secure (i.e., that persons not invited to be parties to
 14 Zoom videoconferences could not hear or see Zoom videoconferences or join into
 15 private Zoom videoconferences) were true.

16 86. Zoom reasonably relied upon the public claims by Zoom that the Zoom
 17 videoconferencing service was secure (i.e., that persons not invited to be parties to
 18 Zoom videoconferences could not hear or see Zoom videoconferences or join into
 19 private Zoom videoconferences).

20 87. Milne used the Zoom Waiting Room, and No ability for [non-host] users
 21 to share their screens features.

22 88. Milne used Zoom to confer privately with one or more attorneys
 23 representing him on unrelated matters, with one or more mortgage brokers, and with
 24 one or more of his treating physicians; Milne verified on the Zoom App (by clicking
 25 on the green shield), which resulted in an assurance that encryption was enabled.

26 89. Milne was not aware, and did not understand, that Zoom would collect
 27 and share his personal information with third parties who would use that personal
 28

1 information to assemble data about Mr. Milne for purposes of targeted advertising and
2 to attempt to influence Mr. Milne's behaviors.

3 90. Milne did not give Zoom permission to access, take or use his personally
4 identifiable information.

5 91. Milne relied upon Zoom's promises that (a) Zoom does not sell users' data;
6 (b) Zoom takes privacy seriously and adequately protects users' personal information;
7 and (c) Zoom's video conferences are secured with end-to-end encryption
8 and are protected by passwords and other security measures.

9 92. If Milne had known that the video conferencing service was not secure,
10 or if Milne had known that Zoom had failed to secure Milne's personally identifiable
11 information, he would not have purchased a Zoom Pro account (or he would have paid
12 less for it).

13 93. Milne has accessed the Zoom videoconferencing service from, at a
14 minimum, the following phones and computers:

- a. Macbook;
 - b. iPhone prior to about April, 2020; and
 - c. iPhone X from and after about April, 2020.

18 94. Through early 2022, Milne generally accepted updated software from
19 Zoom at or near the time it was issued, and also accepted updated Apple operating
20 system software on his various devices as those were issued.

21 95. The Zoom App on Milne's iPhone X today is Version 5.9.2.

FIRST CLAIM FOR RELIEF

(for invasion of privacy)

(Cal. Const., art. I, § 1)

(Cal. Civ. Code, § 22.2)

(by Plaintiffs and the Plaintiff Class, against Defendant, Zoom)

26 96. The averments contained in paragraphs 1 through 95 hereof are
27 incorporated herein by reference.

97. The Constitution of the State of California provides, *inter alia*:

1 “**All** people are by nature free and independent and have
 2 inalienable rights. Among these are enjoying and defending life and
 3 liberty, acquiring, possessing, and protecting property, and pursuing and
 4 obtaining safety, happiness, **and privacy.**”

5 (*See, Cal. Const., art. I, § 1. [Emphasis added.]*)

6 98. The words, “... and privacy”, were added to the above-quoted Article I,
 7 section 1 of the California Constitution by an initiative (**hereinafter the “Voter**
 8 **Initiative”**) adopted by the voters on 7 November 1972.

9 99. Article I, section 1 of the California Constitution creates a private right
 10 of action against private as well as governmental entities.

11 100. As the Supreme Court has noted, the ballot argument in favor of the Voter
 12 Initiative observes that the California constitutional right of privacy:

13 “... prevents government and business interests from [1] collecting and
 14 stockpiling unnecessary information about us and from [2] misusing
 15 information gathered for one purpose in order to serve other purposes or
 16 to embarrass us.”⁷

17 101. Zoom invaded the privacy of Plaintiffs and the Plaintiff Class, at a
 18 minimum, in the manners set out above, including provision to Google of the precise
 19 physical locations of Plaintiffs and Class Members, as well as the provision of other
 20 sensitive personally identifiable information to Google and Facebook (as described
 21 above).

22 102. This invasion of privacy could not have been discovered by the exercise
 23 of reasonable diligence, and was unknown to Plaintiffs until in or after December of
 24 2021, at which time there was worldwide multi-outlet dissemination of information
 25 regarding the Prior Litigation and the then-proposed settlement thereof. Prior to this

27 7 *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35-36.
 28

1 worldwide multi-outlet dissemination of information regarding the Prior Litigation,
2 neither Plaintiffs, nor Class Members, had any reason to have, (1) suspicion of
3 wrongdoing; (2) knowledge of harm; or (3) knowledge of cause of harm such that any
4 of them should believe he or she is entitled to recourse.

5 103. Plaintiffs and the Class Members had specific, legally protected privacy
6 interests in the data taken and disseminated both because it reveals sensitive and
7 confidential matter, and precludes their making intimate personal decisions or
8 conducting personal activities without observation, intrusion, or interference.

9 104. Plaintiffs and the Class Members had a reasonable expectation of privacy
10 regarding the above-described sensitive personally identifiable information.

11 105. This above-described invasion of privacy is a serious invasion, precisely
12 because the above-described sensitive personally identifiable information was used
13 to create and contribute to electronic Dossiers used to follow the internet activities of
14 Plaintiffs and the Class Members, including websites visited, thereby revealing
15 personal interests of even the most intimate nature, as well as contacts with medical
16 providers of all kinds, and even commercial ties to banks and businesses.

17 106. This above-described invasion of privacy has proximately caused and
18 inflicted actual damage to Plaintiffs and the Class Members.

19 WHEREFORE, Plaintiffs and the Class Members request relief as set forth
20 hereinbelow.

SECOND CLAIM FOR RELIEF
(for breach of implied contract)
(Cal. Civ. Code, § 22.2)

(by Plaintiffs and the Plaintiff Class, against Defendant, Zoom)

24 107. The averments contained in paragraphs 1 through 106 hereof are
25 incorporated herein by reference.

26 108. Zoom provided videoconferencing services Plaintiffs and Class Members.

27 109. In exchange, Zoom received benefits in the form of monetary payments

1 and/or other valuable consideration, *e.g.*, access to their private and sensitive personal
2 data.

3 110. Zoom acknowledged these benefits and accepted or retained them.

4 111. In using Zoom videoconferencing services, Plaintiffs and Class Members
5 continually provide Zoom with their valuable private and sensitive personal
6 information.

7 112. By providing that information, and upon Zoom's acceptance of that
8 information, Plaintiffs and Class Members, on the one hand, and Zoom, on the other,
9 entered into implied contracts, separate and apart from Zoom's terms of service, under
10 which Zoom agreed to and was obligated to take reasonable steps to secure and
11 safeguard that sensitive information.

12 113. All parties understood that such security was integral and essential to
13 Zoom's entire line of business – secure video conferencing services.

14 114. Under those implied contracts, Zoom was obligated to provide Plaintiffs
15 and Class Members with Zoom meetings that were suitable for their intended purpose
16 of providing secure video conferencing services, rather than other video conferencing
17 services vulnerable to unauthorized access, incapable of providing safety and security,
18 and instead actually utilized to track its users' personal data for commercial purposes.

19 115. Without such implied contracts, Plaintiffs and Class Members would not
20 have used Zoom meetings and would not have conferred benefits on Zoom, but rather
21 would have chosen alternative video conferencing services that did not present these
22 privacy and safety risks.

23 116. Plaintiffs and Class Members have fully performed their obligations
24 under these implied contracts.

25 117. As described hereinabove, Zoom did not take reasonable steps to
26 safeguard Plaintiffs' and Class Members' private and sensitive personal information.
27 In fact, Zoom willfully violated those privacy interests by tracking and disclosing
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1 Plaintiffs' and Class Members' sensitive personal data to third parties without consent.

2 118. Because Zoom failed to take reasonable steps to safeguard Plaintiffs' and
3 Class Members' private and sensitive personal information, Zoom has breached its
4 implied contracts with Plaintiffs and Class Members.

5 119. Zoom's failure to fulfill its obligation to safeguard Plaintiffs' and Class
6 Members' private and sensitive personal information resulted in Plaintiffs and Class
7 Members receiving video conferencing services that were of less value than they
8 provided consideration for (*i.e.*, unsecure video conferencing services without
9 adequate security).

10 120. Because Plaintiffs and Class members provided valuable consideration
11 for secure video conferences and privacy protections they did not receive – even
12 though such protections were a material part, if not the very essence, of their contracts
13 with Zoom – the full benefit of their bargain.

14 121. As a result of Zoom's conduct, Plaintiffs and Class Members have
15 suffered actual damages in an amount equal to the difference between: (a) the value
16 of the video conferencing services for which they provided valuable consideration (on
17 the one hand), and (b) the unsecure video conferencing services they actually received
18 (on the other hand).

19 122. One of the covenants of the implied contracts is an implied covenant of
20 good faith and fair dealing.

21 123. Under the implied covenant of good faith and fair dealing, Zoom is
22 obligated, at a minimum, (a) to implement proper procedures to safeguard the personal
23 information of Plaintiffs and other Class Members; (b) to refrain from disclosing,
24 without authorization or consent, the personal information of Plaintiffs and other Class
25 Members to any third parties; (c) to promptly and accurately notify Plaintiffs and other
26 Class Members of any unauthorized disclosure of, access to, and use of their personal
27 information; and (d) to maintain adequate security and proper encryption in Zoom's
28

1 | videoconferences.

2 124. Zoom breached the implied covenant of good faith and fair dealing by,
3 among other things:

- disclosing Plaintiffs' and other Class Members' personal information to unauthorized third parties, including Facebook and Google;
 - allowing third parties to access the personal information of Plaintiffs and other Class Members;
 - failing to implement and maintain adequate security measures to safeguard users' personal information;
 - failing to timely notify Plaintiffs and other Class Members of the unlawful disclosure of their personal information; and
 - failing to maintain adequate security and proper encryption in Zoom's videoconferences.

14 125. The above-described breaches of contract have proximately caused and
15 inflicted actual damage to Plaintiffs and the Class Members.

16 WHEREFORE, Plaintiffs and the Class Members request relief as set forth
17 hereinbelow.

THIRD CLAIM FOR RELIEF
(for restitution)
(Bus. & Prof. Code, §§ 17200, *et seq.*)
(by Plaintiffs and the Plaintiff Class, against Defendant, Zoom)

126. The averments contained in paragraphs 1 through 125 hereof are
incorporated herein by reference.

127. Zoom's above-described acts are *unlawful* in at least the following
respects:

- a. By accessing user location data, and by providing that and other data from phones and computers of Plaintiffs and Class Members to third parties (including Facebook and Google), Zoom has, "... [k]nowingly

1 accesse[d] and without permission ... use[d] ... computer[s], [and]
2 computer system[s] [belonging to Plaintiffs and Class Members] ... to ...
3 wrongfully control [and/]or obtain ... data [belonging to Plaintiffs and
4 Class Members]," for purposes of Penal Code section 502, subdivision
5 (c)(1); and

6 b. By providing data from phones and computers of Plaintiffs and Class
7 Members to third parties (including Facebook and Google), Zoom has,
8 "... [k]nowingly accesse[d] and without permission take[n] copie[d],
9 [and/]or ma[de] use of ... data from ... computer[s], computer system[s],
10 [and/]or computer network[s] [belonging to Plaintiffs and Class
11 Members]," for purposes of Penal Code section 502, subdivision (c)(2).

12 128. Zoom's above-described acts are *unfair* in at least the following respects:

13 a. the above-described invasions of privacy are tethered to the
14 constitutional right of privacy guaranteed to all people by Article I,
15 Section 1, of the California Constitution; and

16 b. Zoom's practice of surreptitiously accessing user location data, and
17 surreptitiously providing that and other data from phones and computers
18 of Plaintiffs and Class Members to third parties (including Facebook and
19 Google), all without the consent of Plaintiffs and the Class Members, is
20 is immoral, unethical, oppressive, unscrupulous, and/or substantially
21 injurious to Plaintiffs and the Class Members.

22 129. Plaintiffs and the Class Members have each lost money and/or property
23 as a direct and proximate result of Zoom's above-described unfair competition.

24 WHEREFORE, Plaintiffs and the Class Members request relief as set forth
25 hereinbelow.

26 ///

27 ///

28 **COMPLAINT ON BEHALF OF THE NON-AMERICAN PEOPLES OF THE
FIVE EYES COUNTRIES; DEMAND FOR JURY TRIAL – PAGE 24**

FOURTH CLAIM FOR RELIEF
(for injunction)
(Bus. & Prof. Code, §§ 17200, *et seq.*)
(by Plaintiffs and the Plaintiff Class, against Defendant, Zoom)

130. The averments contained in paragraphs 1 through 129 hereof are incorporated herein by reference.

131. Plaintiffs note that the Court-approved settlement of the Prior Litigation includes, *inter alia*, the following injunctive covenant:

“Zoom will request that Facebook delete any U.S. user data obtained from the integration of the Facebook Login SDK for iOS with Zoom Meetings within 30 days of the date that the settlement is final and unappealable, and will request that Facebook provide written verification that it has done so.”

(See, Prior Litigation Document 191-1, at Page 19, at Section 3(e). [Emphasis added.])

132. Zoom's above-described collection of Plaintiffs' and Class Members' sensitive personal data (including precise location data) to third parties (including Facebook and Google) could not have been consensual, because Zoom's particular conduct in doing so had not been disclosed in advance.

133. The facts set forth hereinabove establish that Plaintiffs and the Plaintiff Class are entitled to injunctive relief to prevent continuing and/or future use and/or employment by Zoom of the above-described practices constituting unfair competition which have not already been enjoined by operation of the order granting final approval of the settlement of the Prior Litigation.

WHEREFORE, Plaintiffs and the Plaintiff Class request relief as set forth hereinbelow.

///

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Plaintiff Class request the following relief:

- a. On the First Claim for Relief, judgment over and against Defendant, Zoom, awarding monetary damages as a remedy for the above-described invasion of privacy;
 - b. On the Second Claim for Relief, judgment over and against Defendant, Zoom, awarding monetary damages as a remedy for the above-described breaches of implied contract, including the covenant of good faith and fair dealing contained therein;
 - c. On the Third Claim for Relief, judgment over and against Defendant, Zoom, awarding monetary restitution of all money and property Zoom has acquired by means of the above-described unfair competition;
 - d. On the Fourth Claim for Relief, judgment over and against Defendant, Zoom:
 - i. compelling Zoom to perform the same acts with respect to Plaintiffs' and Class Members' sensitive personal data as it has performed with respect to, "... U.S. user data ...", pursuant to the above-quoted provision of the Court-approved settlement agreement in the Prior Litigation (*see*, Document 191-1, at Page 19, at Section 3(e)); and
 - ii. prohibiting Zoom from providing any of Plaintiffs' and Class Members' sensitive personal data (including but not limited to location data) to any third party in the absence of informed and effective consent, obtained upon disclosure of: (a) the identities of such third parties, (b) the precise nature of the data to be provided to such third parties, and (c) Zoom's understanding of the use or uses to which such third parties would put such data;

1 e. and such other relief, at law or in equity, to which this Court may find
2 Plaintiffs and the Plaintiff Class to be entitled.

3
4 Dated: 31 May 2022

Respectfully submitted,

5 DAVID J. GALLO
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8 /s/ David J. Gallo

9 By: David J. Gallo,
10 California Bar No. 127722
11 Attorneys for Plaintiffs, S. WESTRON,
12 and J. MILNE

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27 [COMPLAINT filed 31MAY22.wpd]

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**COMPLAINT ON BEHALF OF THE NON-AMERICAN PEOPLES OF THE
31 FIVE EYES COUNTRIES; DEMAND FOR JURY TRIAL – PAGE 27**

JURY DEMAND

Plaintiffs, S. Westron and J. Milne, on behalf of themselves and the Plaintiff Class, hereby demand trial by jury of all issues triable by a jury pursuant to applicable law, including, but not necessarily limited to, the Seventh Amendment to the United States Constitution.

Dated: 31 May 2022

Respectfully submitted,

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[COMPLAINT filed 31MAY22.wpd]